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Katherine A. Belinski
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June 25, 2012

Mr. Anthony Herman
General Counsel
Federal Election Commission
999 E. Street NW
Washington, DC 20008

Re: MUR 6586

Dear Mr. Herman:

This response is filed on behalf of the Committee to Re-Elect Ed Towns ("Committee"), and Albert C. Wiltshire, in his official capacity as treasurer (collectively referred to as "Respondents") in response to the Complaint filed by the Campaign Legal Center ("Complainant") in the above-referenced matter alleging a violation of the Federal Election Campaign Act ("Act"). For the reasons set forth below, the Respondents respectfully request that the Commission find no reason to believe the Committee violated the Act, or, in the alternative, exercise its prosecutorial authority and dismiss the Complaint in this matter.

Factual Background

Congressman Edolphus Towns has served the 10th congressional district of New York since 1983. In April 2012, Congressman Towns announced that he would not seek reelection for a sixteenth term, and the Committee is beginning the process of winding down. The Congressman and his wife, Gwendolyn Towns, reside in Brooklyn and frequently travel between Washington, DC and Brooklyn via train or automobile, depending on the circumstances.

During the height of the 2010 election, Congressmæn Towns and his wife executed a three-year lease for a 2010 Infiniti G37 automobile that they intended to use for mixed campaign and personal purposes. Per the terms of the contract, monthly payment on the lease is \$602.33, and these expenses have been paid by the Committee every month to cover the campaign and office-holder related uses of the vehicle. Additional monthly expenses for insurance and fuel totaling approximately \$250 to \$300 are paid by Congressman Towns or Mrs. Towns from their personal funds to cover the portion of the vehicle that is used for their

personal purposes.¹ The current mileage on the vehicle as of the date of the complaint was 5,224, for an average of 227 miles per month since the vehicle was purchased.

The vehicle is primarily located and used in Brooklyn by Mrs. Towns, the Congressman, and campaign staffers. Mrs. Towns frequently uses the vehicle to participate in campaign or officeholder events in Brooklyn, including monthly meetings of the Women's Caucus, Concerned Women of Brooklyn, IMC Auxiliary, the Men's Caucus, the ARTC Board of Directors, the board of the Bedford YMCA, the Unity Democratic Club, and various neighborhood and block association meetings. She also uses the vehicle to travel to Albany for the Black and Puerto Rican Caucus meetings and the vehicle has been driven to Washington, DC on several occasions to participate in events. As stated above, Mrs. Towns also uses the vehicle for personal purposes, such as driving to her place of employment at the Interfaith Hospital in Brooklyn.

Legal Analysis

The complaint alleges that Congressman Towns, through the Committee, converted campaign funds to personal use by leasing a vehicle that allegedly "is used primarily or exclusively by Gwen Towns for non-campaign-related personal activities."² The complaint is based solely upon a 36-second clip that appeared on the television show *Inside Edition* on May 1, 2012, and a subsequent *New York Daily News* article that contained basically the same limited information. Both the TV clip and the article claim that the Congressman's wife used the vehicle to drive to her job, the dry cleaners and the car wash. According to the *Inside Edition* report, Mrs. Towns was observed driving the vehicle "day after day" but provides no quantifiable information about Mrs. Towns' use of the vehicle. The Complaint offers no further factual basis for its speculative allegations.

Under the Act and Commission regulations, candidates and their committees have broad discretion in how campaign funds are spent, so long as the funds are not converted to the personal use of a candidate. See 2 U.S.C. §§ 431(9) and 439a; 11 C.F.R. § 113.1(g) and 113.2. Personal use is defined as "any use of funds in a campaign account of a present or former candidate to fulfill a commitment, obligation or expense of any person that would exist irrespective of the candidate's campaign or duties as a federal officeholder." 11 C.F.R. § 113.1(g). The Commission's regulations provide a list of *per se* expenditures that would constitute personal use, such as mortgage and rent payments, health club memberships, vacations and household food items. For other purposes not included on the list, the Commission makes a case-by-case determination whether an expense would fall within the category of personal use. *Id.*

Vehicle expenses are included under the examples of case-by-case determinations. See 11 C.F.R. § 113.1(g)(1)(ii)(D). The regulations specifically provide that a vehicle can be used for mixed campaign and personal purposes so long as the committee does not use campaign

¹ The annual insurance on the vehicle costs \$2,093, which is approximately \$175 per month. Costs for premium fuel vary widely from month to month and depending on the location where purchased.

² Complaint at 3.

funds to pay for the portion attributable to more than *de minimus* personal use activities, or the committee is reimbursed within 30 days for the vehicle expenses associated with the personal use activities. *Id.* The Commission has contemplated the mixed use of leased or purchased vehicles in a series of advisory opinions and has blessed various ownership, payment and reimbursement structures so long as, ultimately, the campaign does not pay for the portion of the vehicle attributable to personal use. See AO 2001-03 (Meeks); AO 1992-12 (LaRocco); AO 1984-59 (Russo).

The Complaint's allegation that Congressman Towns' vehicle was used solely for personal use is baseless and inaccurate. The Congressman freely admits that the vehicle is used for some personal activities in addition to the campaign uses of the vehicle, but that use is paid for by the Congressman and his wife through the vehicle expenses they pay for out of their personal funds. The overall cost of the vehicle is between approximately \$850 and \$900 per month on average, of which the campaign pays \$600 and the Congressman pays \$250 to \$300 per month.³ As the committee engages in the process of winding down and the use of the vehicle shifts from heavy campaign use to increased personal use, the Congressman fully intends to reimburse the Committee in a manner that is proportionate to the use of the vehicle, and ultimately will take over the lease payments entirely.⁴

As discussed above, Mrs. Towns is very active and engaged in community organizations on her husband's behalf and attends a significant number of caucus meetings and other forums as a result of Congressman Towns' officeholder obligations and, previously, campaign activities. The snapshot of time captured in the *Inside Edition* "expose" does not provide an accurate portrayal of the use of the vehicle. It is not clear how long the show even tracked Mrs. Towns' activities, but it certainly was not "day after day" based upon the limited activities they cited. Additionally, the vehicle is also used by the Congressman himself for campaign and officeholder activities, and occasional travel to and from Washington, DC. Considering the volume of campaign and officeholder activities outlined above for which the vehicle is used, and in light of the very low mileage incurred over the past 23 months of the lease, clearly the personal uses of the vehicle are only a fraction of the overall use of the vehicle.

The Complaint does not contain any facts aside from the specious information contained in this "journalistic expose" from the less-than-reputable and sensationalistic news source *Inside Edition* which was repeated by the *New York Daily News*. As laid out above, the allegations are baseless and inaccurate. Accordingly, the Respondents respectfully request

³ Even assuming, *arguendo*, that there were some months in which the proportion of personal use to campaign use was greater or less than the ratio of payments, the total amount that the Committee has paid on the vehicle as of the date of the complaint is only \$14,316.34. Thus, even if the vehicle had been used 100% for personal use purposes (which it was not), the potential dollar amount at issue is relatively low.

⁴ Although in Advisory Opinion 2001-03 (Meeks) the Commission approved a proposal maintain a mileage log that would be updated with each use of the vehicle, this did not create an affirmative obligation to keep such a log for all mixed use vehicles. The Towns' calendar entries, bills and receipts provide a sufficient record to determine the proportion of the vehicle expenses attributable to campaign uses versus personal activities.

that the Commission find no reason to believe the Committee violated the Act, or, in the alternative, exercise its prosecutorial authority and ~~dismiss~~ the Complaint in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'K. Belinski', with a long horizontal flourish extending to the right.

Katherine A. Belinski
Counsel to the Committee to Reelect
Congressman Ed Towns, and Albert C.
Wiltshire, in his official capacity as treasurer

KAB1/



FEDERAL ELECTION COMMISSION

999 E Street, NW

Washington, DC 20463

STATEMENT OF DESIGNATION OF COUNSEL
Please use one form for each Respondent/Entity/Treasurer.
FAX (202) 219-3923

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 OFFICE OF
 CLERK

MUR # 6585

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The above-named individual and/or firm is hereby designated as my counsel and is authorized to receive any notifications and other communications from the Commission and to act on my behalf before the Commission.

6/26/12 Date Albert C. Wiltshire Respondent/Agent-Signature Treasurer Title (Treasurer/Candidate/Owner)

RESPONDENT: Committee to Re-Elect Ed Towns, and Albert C. Wiltshire in his capacity as Treasurer
 (Committee Name, Company Name, or Individual Named in Notification Letter)

MAILING ADDRESS: _____
 (Please Print)

Brooklyn, NY 11233

TELEPHONE- HOME () _____

BUSINESS (718) 855-8018

Information is being sought as part of an investigation being conducted by the Federal Election Commission and the confidentiality provisions of 2 U.S.C. § 437g(a)(12)(A) apply. This section prohibits making public any investigation conducted by the Federal Election Commission without the express written consent of the person under investigation

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